

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #05	CCRB Case #: 202107861	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/26/2021 1:19 AM	Location of Incident: in front of 2710 Brown Street	18 Mo. SOL 6/26/2023	Precinct: 61		
Date/Time CV Reported Mon, 12/27/2021 5:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 12/27/2021 5:21 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. PO Peter Kim	23537	964092	061 PCT
2. PO Angel Martinez	20063	968610	061 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Peter Kim	Force: Police Officer Peter Kim pointed his gun at § 87(2)(b)	[REDACTED]
B . PO Peter Kim	Force: Police Officer Peter Kim pointed his gun at § 87(2)(b)	[REDACTED]
C . PO Peter Kim	Discourtesy: Police Officer Peter Kim spoke discourteously to § 87(2)(b)	[REDACTED]
D . PO Peter Kim	Discourtesy: Police Officer Peter Kim spoke discourteously to § 87(2)(b)	[REDACTED]
E . PO Peter Kim	Abuse: Police Officer Peter Kim frisked § 87(2)(b)	[REDACTED]
F . PO Peter Kim	Abuse: Police Officer Peter Kim frisked § 87(2)(b)	[REDACTED]
G . PO Peter Kim	Abuse: Police Officer Peter Kim searched § 87(2)(b)	[REDACTED]
H . PO Peter Kim	Abuse: Police Officer Peter Kim failed to provide § 87(2)(b) with a business card.	[REDACTED]
I . PO Peter Kim	Abuse: Police Officer Peter Kim seized § 87(2)(b) property.	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

## Case Summary

On December 27, 2021, § 87(2)(b) filed this on the CCRB website on behalf of her then-15-year-old son § 87(2)(b) and his then-13-year-old friend § 87(2)(b) did not witness the incident.

On December 26, 2021, at approximately 1:19 a.m., at 2710 Brown Street in Brooklyn, Police Officers Peter Kim and Angel Martinez of the 61<sup>st</sup> Precinct stopped § 87(2)(b) and § 87(2)(b). § 87(2)(b) was operating § 87(2)(b) ATV, and § 87(2)(b) was riding as a passenger. PO Kim pointed his gun at § 87(2)(b) and § 87(2)(b) (**Allegation A-B: Force, § 87(2)(g)**). PO Kim also spoke discourteously to § 87(2)(b) and § 87(2)(b) (**Allegations C-D: Discourtesy, § 87(2)(g)**). PO Kim frisked § 87(2)(b) and asked him if he had any weapons on him (**Allegation E: Abuse of Authority, § 87(2)(g)**). PO Kim allegedly frisked § 87(2)(b) (**Allegation F: Abuse of Authority, § 87(2)(g)**). PO Kim allegedly ordered § 87(2)(b) to remove an item from his pocket (**Allegation G: Abuse of Authority, § 87(2)(g)**). PO Kim failed to provide a business card to § 87(2)(b) (**Allegation H: Abuse of Authority, § 87(2)(g)**). PO Kim ultimately seized § 87(2)(b) ATV and vouchered it for purposes of determining its true owner (**Allegation I: Abuse of Authority, § 87(2)(g)**). PO Kim issued three summonses to § 87(2)(b) for failure to produce proof of insurance, driving an unregistered motorcycle, and driving the wrong way on a one-way street (Board Review 01). § 87(2)(g), § 87(2)(b)

The CCRB obtained BWC footage from PO Kim and PO Martinez (Board Review 02-03, summarized in Board Review 04). However, the footage does not comprehensively capture the interaction because both officers did not activate their BWCs at the beginning of the incident. All references to video refer to the timestamp in the video player and not to any video's on-screen timestamp.

## Findings and Recommendations

**Allegation (A) Force: Police Officer Peter Kim pointed his gun at § 87(2)(b)**

**Allegation (B) Force: Police Officer Peter Kim pointed his gun at § 87(2)(b)**

**Allegation (C) Discourtesy: Police Officer Peter Kim spoke discourteously to § 87(2)(b)**

**Allegation (D) Discourtesy: Police Officer Peter Kim spoke discourteously to § 87(2)(b)**

It is undisputed that § 87(2)(b) committed numerous vehicular infractions after first noticing the officers in the vicinity of Nostrand Avenue and Avenue Y in Brooklyn and prior to officers stopping him on Brown Street. It is further undisputed that PO Kim pointed his gun at § 87(2)(b) and § 87(2)(b) while they were riding on the ATV. It is also undisputed that PO Kim used profanity while giving orders to § 87(2)(b) and § 87(2)(b) but the exact words he used are in dispute.

§ 87(2)(b) testified that after committing numerous infractions and being followed by PO Kim's vehicle, which he said was directly behind him, he ultimately stopped trying to escape (Board Review 05). He pulled over to the left side of Brown Street, stopped on the sidewalk, and turned the ATV off. § 87(2)(b) was seated behind § 87(2)(b) on the ATV. After PO Kim drove in front of § 87(2)(b) and parked in a nearby driveway, PO Kim exited his vehicle and pointed his gun at § 87(2)(b). PO Kim either said, "Get on the ground," or, "Get on the fucking ground." § 87(2)(b) could not recall with certainty whether PO Kim used profanity.

§ 87(2)(b) testified that PO Kim's vehicle was coming toward them as they travelled northbound on Brown Street (Board Review 06). He recounted that § 87(2)(b) attempted to go around the police vehicle by driving onto the sidewalk on his left, but the vehicle pulled into a driveway, effectively blocking his path. § 87(2)(b) then stopped the ATV. PO Kim got out of the driver's seat and pointed his gun at § 87(2)(b) who was sitting directly in front of § 87(2)(b). PO Kim screamed, "Get the fuck off the bike!" He then screamed louder, "Get off the fucking bike!" Once the two boys got off, PO Kim continued walking up to them with his gun still pointed at them. By this point, § 87(2)(b) was standing to the right of § 87(2)(b) and PO Kim was approaching somewhat from the right, so as he was approaching them, PO Kim was now pointing his gun at § 87(2)(b) head. PO Kim told the two boys, "Get on the fucking ground." § 87(2)(b) and § 87(2)(b) dropped to their knees. PO Kim approached them and holstered his firearm.

PO Kim testified that § 87(2)(b) had committed reckless endangerment in addition to various other vehicular infractions because he almost collided with a motorist when he turned the wrong way down Haring Street from Voorhies Avenue (Board Review 07). PO Kim testified that upon seeing the ATV on Brown Street, he was going southbound as § 87(2)(b) went northbound. Upon PO Kim activating the RMP's lights, § 87(2)(b) drove onto the sidewalk to PO Kim's right, so PO Kim turned right onto the same sidewalk to ensure that § 87(2)(b) could not evade him. As a result, the driver side of the RMP was now facing southbound where § 87(2)(b) was driving. PO Kim further testified that § 87(2)(b) continued driving even after PO Kim turned onto the sidewalk. PO Kim exited the vehicle and pointed his gun at § 87(2)(b) who was now still driving forward toward PO Kim. § 87(2)(b) began to slow down, but PO Kim could not tell what his speed was. PO Kim cited several reasons for pointing his gun at § 87(2)(b). As § 87(2)(b) appeared determined to evade the officers, and as he continued driving the ATV toward PO Kim on the sidewalk, PO Kim feared that the ATV could strike him or his partner and cause serious physical injury. PO Kim also testified that § 87(2)(b) driving placed a pedestrian at risk on Brown Street, though PO Kim noted that this pedestrian was walking on the opposite sidewalk. PO Kim acknowledged that there were no pedestrians on the sidewalk where § 87(2)(b) drove the ATV. PO Kim denied that he separately pointed his gun at § 87(2)(b).

PO Martinez provided testimony to the CCRB just under eight months after the incident (Board Review 08). PO Martinez did not remember numerous undisputed facts about this incident, such as § 87(2)(b) disobeying red lights, PO Kim pursuing § 87(2)(b) after first noticing him, and PO Kim using profanity. He specifically denied that § 87(2)(b) ever attempted to ram him, PO Kim, or their police vehicle. He also did not remember there being any pedestrians on Brown Street. PO Martinez acknowledged that PO Kim pointed his gun in the vicinity of the ATV but was unable to ascertain exactly at whom or what he was pointing it, citing that he was more focused on the ATV itself than on PO Kim.

As will be discussed in the analysis of **Allegations E-G**, PO Kim also noticed a bulge in § 87(2)(b) right pocket and noted that he saw him twice lower his hands toward that area. However, PO Kim testified that he did not notice this until after he pointed his gun at § 87(2)(b). PO Martinez also noticed a bulge on § 87(2)(b) but did not notice one on § 87(2)(b). PO Martinez further did not remember when he first noticed this bulge relative to the point that PO Kim pointed his gun, citing that he was more focused on the ATV than on PO Kim. Therefore, the investigation did not consider these factors in the analysis of PO Kim's decision to point his gun at the two boys while they were still riding atop the ATV.

There is no footage of this portion of the incident, as neither officer activated his BWC in time to capture it.

Though all parties indicated that PO Kim was standing directly in the path of the RMP, the testimonies differed regarding whether § 87(2)(b) had stopped the ATV by the time PO Kim pointed his gun at the two boys. Absent additional evidence or video footage, the investigation could not overcome that contradiction. PO Kim's own testimony does make clear, however, that the ATV was not presenting a threat of serious harm to the pedestrian walking on the other side of the street.

Patrol Guide Procedure 221-01 states, "Uniformed members of the service are authorized under New York State law to discharge a firearm to prevent or terminate the unlawful use of force that may cause death or serious physical injury." "The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present." Officers are categorically prohibited from "discharg[ing] their firearms at or from a moving vehicle unless deadly physical force is being used against the member of the service or another person present, *by means other than a moving vehicle*" (Board Review 09) (emphasis added).

DCT Case 76927-04 states, "When a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officers' verbal slip does not rise to the level of actionable misconduct" (Board Review 10).

As explained above, the investigation was unable to determine whether PO Kim reasonably believed that the ATV was going to drive into him. Regardless, the Patrol Guide categorically prohibits using a firearm against a moving vehicle unless deadly force is being used by something other than the vehicle itself. § 87(2)(g)

As noted above, it is undisputed that § 87(2)(b) went to great extent to evade police officers by committing numerous VTL infractions. § 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Peter Kim frisked § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Peter Kim frisked § 87(2)(b)**

**Allegation (G) Abuse of Authority: Police Officer Peter Kim searched § 87(2)(b)**

It is undisputed that PO Kim asked § 87(2)(b) if he had any weapons on him and frisked § 87(2)(b)

§ 87(2)(b) did not testify as to whether or not he put his hands up while seated on the ATV or if PO Kim ever told the boys to put their hands up. The only order that he recalled was the order to get on the ground. § 87(2)(b) testified that he kept his hands outstretched on the ground once he was on the ground. PO Kim asked if he had any weapons on him and then momentarily tapped his left hip. PO Kim might have made brief contact with one of his thighs and might have "squeezed" one of his pockets, but § 87(2)(b) did not know for sure. He denied that PO Kim made any further physical contact with him. § 87(2)(b) had his phone, keys, and gloves on him, but he did not remember which pockets they were in. § 87(2)(b) also believed that § 87(2)(b) was frisked but did not actually see it happen.

§ 87(2)(b) testified that PO Kim frisked him by his stomach, armpits, and waist. § 87(2)(b) had his phone in his left jacket pocket and his keys in his right pants pocket. PO Kim then similarly frisked § 87(2)(b). After PO Kim felt an object on § 87(2)(b) person, he asked § 87(2)(b) to remove the object from his pocket. § 87(2)(b) complied and showed that it was



a set of keys. However, in a follow up call after his interview, § 87(2)(b) said that he did not recall PO Kim telling him to remove an object from his pockets (Board Review 11).

PO Kim testified that he saw a square-shaped bulge in § 87(2)(b) right pocket. He clarified that by “square,” he literally meant that it appeared to be even on all sides, each of which was approximately two to three inches. The object slightly weighed his pants down but did not appear “too heavy.” PO Kim believed this to be the butt of a firearm. PO Kim acknowledged that this could have been an innocuous item such as a phone or a wallet, but the totality of the circumstances led PO Kim to believe that this object was likely to be a gun. Specifically, the circumstances were § 87(2)(b) fleeing and disobeying his orders to put his hands up by lowering them toward his waist twice after PO Kim previously told him to put them up.

PO Kim patted down § 87(2)(b) right pocket and then patted down the waistband and left pocket. He patted down the left pocket and waistband because whenever he suspects someone has a weapon, he will frisk the entire waistband area because that is where people typically conceal weapons. Upon feeling the bulge, he determined it to be § 87(2)(b) phone. PO Kim was satisfied with his frisk and never searched § 87(2)(b) or instructed him to remove anything from his pockets.

PO Kim denied that he ever conducted a full body pat down of either § 87(2)(b) or § 87(2)(b). PO Kim, citing lack of memory, neither confirmed nor denied frisking § 87(2)(b) but stated that it was possible that he briefly patted down § 87(2)(b) front sweater pocket as he saw a bulge in this pocket. PO Kim had no knowledge of what that object was.

The only suspicion that PO Martinez had that either § 87(2)(b) or § 87(2)(b) was armed was a bulge in the front pocket of § 87(2)(b) hoodie. He did not observe any bulges in any other pockets, and he did not see either individual reaching down toward their waist. He described the bulge as being approximately seven inches in length and weighing down § 87(2)(b) sweater. He was unable to describe the shape of it. While he suspected it could be a weapon, he acknowledged that he did not know what it was. He also did not remember seeing either individual reach toward their waistbands and did not remember PO Kim having to give multiple orders to show hands.

PO Martinez offered essentially no helpful testimony about what transpired during the alleged frisks of § 87(2)(b) and § 87(2)(b). He testified that he assisted with frisking in some capacity, but also did not remember whom he frisked, what parts of the body he frisked, or whether he assisted in frisking both individuals. He stated that the only factor that led to him assisting with a frisk was a bulge that he observed in § 87(2)(b) front sweater pocket. However, having testified to this, he was still unable to say with certainty that he assisted in frisking § 87(2)(b) despite § 87(2)(b) bulge being the only reason he cited for participating in a frisk. He did not remember who frisked § 87(2)(b) or whether PO Kim ever asked if § 87(2)(b) had any weapons on him, two otherwise undisputed facts. He further did not remember anyone taking out a set of keys.

§ 87(2)(g), § 87(4-b)

Due to § 87(2)(b) specific allegation that PO Kim frisked him and PO Martinez’s lack of reliable testimony on what transpired during the frisk, the investigation pleaded the frisk of § 87(2)(b) solely against PO Kim. Due to conflicting testimony between PO Kim and § 87(2)(b) and the lack of reliable testimony from § 87(2)(b) and PO Martinez, the investigation was unable to determine if PO Kim frisked § 87(2)(b) as alleged. The investigation was similarly unable to determine whether § 87(2)(b) lowered his hands toward his pockets as alleged by PO Kim.

§ 87(2)(g)

§ 87(2)(b) did not spontaneously bring this up in his initial statement, and although he did not deny it when asked directly later, the investigation determined that § 87(2)(b) most likely would have remembered such a specific interaction, especially after the investigation prompted him with said allegation.

Due to conflicting testimony between civilians and PO Kim, the investigation did not determine if § 87(2)(b) ever lowered his hands toward his waist as PO Kim alleged.

Patrol Guide Procedure 212-11 states, “A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous. This includes situations in which the officer reasonably suspects that the person has committed, is committing, or is about to commit a violent crime or when the officer observes something on the person that she/he reasonably suspects is a weapon” (Board Review 12).

In *People v. Herrar* 120 A.D.2d 614 (2<sup>nd</sup> Dept. 1986), the New York State Appellate Division held that police were justified in frisking a defendant who had been stopped for multiple traffic violations and subsequently reached for an undefined bulge in a jacket pocket (Board Review 13).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer Peter Kim failed to provide § 87(2)(b) with a business card.**

The material facts of this allegation are not in dispute. PO Kim stopped § 87(2)(b) and § 87(2)(b) when he stopped the ATV. PO Kim issued a summons to § 87(2)(b) and no officer issued any summonses to § 87(2)(b). PO Kim did not offer a business card to § 87(2)(b). Because PO Kim was the lead officer in this incident, the investigation pleaded this allegation solely against him. PO Kim testified that he did not offer a business card to § 87(2)(b) because the incident resulted in the issuance of a summons.

Administrative Guide Procedure 304-11 and Administrative Code Section 14-174 state that officers must offer a business card to members of the public upon the conclusion of law enforcement activities, including stops that do not result in an arrest or summons (Board Review 14-15).

Although the incident resulted in a summons being issued, the summons was issued to § 87(2)(b) not § 87(2)(b) § 87(2)(g)

**Allegation (I) Abuse of Authority: Police Officer Peter Kim seized § 87(2)(b) property.**

It is undisputed that § 87(2)(b) ATV was not registered or insured and was used to commit multiple traffic violations. It is further undisputed that PO Kim vouchered § 87(2)(b) ATV. PO Kim's property voucher shows that the vehicle was seized for the purpose of determining true owner (Board Review 16).

Valid reasons for impounding a vehicle include a reasonable basis to believe the vehicle cannot be operated because it is unregistered, uninsured, or uninspected. *People v. Francis*, 12 Misc. 3d 781 (Sup. Ct., NY Co., 2006) (Board Review 17). Patrol Guide Procedures 218-19 and 218-12 indicate that officers may take a vehicle into custody if the true owner cannot be determined, and that such a vehicle may be safeguarded at the stationhouse for two days to await release to a verified owner or his/her representative (Board Review 18).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g), § 87(4-b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) have been a party (Board Review 19).
- PO Kim has been a member of the NYPD for five years and has been a subject in one other CCRB complaint and one allegation, which is still under investigation § 87(2)(g) [REDACTED]

#### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of June 6, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (Board Review 20).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]  
[REDACTED]

Squad: 5

Investigator: Stephen J. DiFiore      Inv. Stephen DiFiore      November 1, 2022  
Signature      Print Title & Name      Date

Squad Leader: Daniel Giansante      IM Daniel Giansante      November 1, 2022  
Signature      Print Title & Name      Date

**CCRB Case # 202107861**

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date